

Consumer Mortgage Coalition

June 7, 2018

Commission's Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Advanced Methods to Target and Eliminate Unlawful Robocalls,
 Second Further Notice of Proposed Rulemaking (CG Docket No. 17-
 59)**

To Whom It May Concern:

The Consumer Mortgage Coalition ("CMC"), a mortgage industry trade association, is very pleased to submit comments to the Federal Communications Commission ("FCC") on its *Notice of Proposed Rulemaking ("NPRM") on Advanced Methods to Target and Eliminate Unlawful Robocalls*. The CMC appreciates the FCC's efforts to resolve the issues that the industry faces when a telephone number has been reassigned from one consumer to another.

As the FCC noted in its NPRM, there are about 35 million telephone numbers that are reassigned each year. Given the volume of changed telephone numbers each year, the rapidity at which the numbers are reassigned, and the lack of any centralized, comprehensive database, it is not possible for callers to know whether the number they are calling has been reassigned. Therefore, legitimate and necessary telephone calls to consumer borrowers are effectively prohibited because those telephone calls might violate the Telephone Consumer Protection Act ("TCPA").

In an effort to address this problem, the FCC has proposed that a database be developed so that callers can verify whether a telephone number has been reassigned or disconnected prior to initiating a call. In its NPRM, the FCC requested input on the best method for reporting information about reassigned or disconnected telephone numbers and how that information should be made available to callers. The CMC believes that use of this database would greatly reduce unwanted calls to consumers and align with callers' intent to call only the intended consumer.

While more detailed responses to the FCC's questions are in the attached addendum,¹ in summary, the CMC supports:

- A single, comprehensive, centralized, and timely database, administered by the FCC, that would enable callers to verify whether a telephone number
 - Interested users should expect the database to be sufficiently comprehensive to avoid having to rely on other databases.
 - The database should specify whether the telephone number has been reassigned since the date initially indicated.
 - Only a “yes” or “no” response is needed as to whether the telephone number has been reassigned.
 - Callers should be provided information when the North American Numbering Plan (“NANP”) numbers are disconnected.
 - Information on when a telephone number has been disconnected will best allow callers to identify, on a timely basis, when a consumer can no longer be reached at that telephone number
- A safe harbor for those entities that choose to use the database and that are trying to reach consumers for legitimate business purposes
 - The safe harbor should cover all telephone calls, not just to those telephone numbers in the database. If the safe harbor is not comprehensive, the database will be of limited use to callers.
 - The safe harbor should include a “good faith” safe harbor so that a caller is not liable for misplaced calls if the caller subscribes to the FCC database and has an adequate call compliance program in place for reassigned numbers.
 - While the FCC establishes its singular database, the safe harbor should permit callers to use private providers until the FCC database is up and running. Use of this database would actually encourage and facilitate compliance, *i.e.*, reducing so-called “robocalls.”
- A clear definition of “called party,” under the TCPA, so that the definition includes the “intended recipient of a call”
 - Industry needs a bright-line test to be able to reach consumers to provide them with the services they need and want.

We would also recommend that the cost to access the database be an annual fee for unlimited access unless the cost-per-inquiry is low.

The CMC believes that the FCC has the authority to both create the database and provide a safe harbor. Congress gave the FCC rulemaking authority for the entire TCPA. The DC Circuit Court of Appeals did not indicate otherwise in the *ACA Int'l, et. al. v. Federal*

¹ The comments and recommendations made by the Consumer Mortgage Coalition in the Addendum coincide with those submitted by the American Financial Services Association.

Communications Commission case final decision.² Specifically, the Court said the safe harbor was part of designing a regime to avoid the problems of the 2015 Order.

The CMC greatly appreciates the FCC's efforts to resolve these difficult issues. If we can provide any further information or analysis, please let us know.

Sincerely,



Anne C. Canfield
Executive Director

² *ACA Int'l, et. al. v. Federal Communications Commission*, Case No. 15-1211, (DC Cir. Mar. 16, 2018).

ADDENDUM

A. Database Information, Access, and Use

In this section of the NPR, the FCC seeks comment on the operational aspects of a reassigned numbers database, namely the type and format of information that callers need from such a database, how comprehensive and timely data needs to be for the database to be effective, any restrictions or limitations on callers' access to and usage of the database, and the best ways to ensure that callers' costs to use a reassigned numbers database are minimized. The FCC also emphasizes that usage of a reassigned numbers database would be wholly voluntary for callers.

12. What information would a legitimate caller have on hand when seeking to search a reassigned numbers database (name of consumer, phone number, date of last call)?

The NPR states that the FCC expects a caller would possess, at a minimum, the following information: (1) the name of the consumer the caller wants to reach; (2) a telephone number associated with that consumer, and (3) a date on which the caller could be confident that the consumer was still associated with that number (*e.g.* the last date the caller made contact with the consumer at that number, the date the consumer last provided that number to the caller, or the date the caller obtained consent to call the consumer.)

The CMC agrees that a caller would possess the consumer's name, the phone number associated with the consumer, the last date the caller made contact with the consumer at that number, the date the consumer last provided that number to the caller, and the date the caller obtained consent.

13 – 17. What information would the Caller need to submit to a reassigned numbers database and what information does the Caller seek to generate from a search? How should the FCC define a reassigned number? Is access to disconnection information preferable to new assigned information? Should the database contain information in addition to disconnection information? Should the database exclude information?

The only information the caller should submit to the database is the phone number.

In return, the caller needs to know whether the number has been reassigned or whether it has been permanently disconnected and the date on which the number was either reassigned or disconnected. The FCC outlines the four steps in a number reassignment process – (1) a number currently in use is disconnected, (2) the number is aged, (3) the number is made available for assignment, and (4) the number is assigned to a new

subscriber. It would be helpful for callers to know whether a number was in step 1, 2, 3, or 4.

The CMC asks that the database identify when the number in use was disconnected and when it was assigned to a new subscriber. In other words, when the database is queried as to whether a number has been reassigned or disconnected and the answer is “yes, it has been reassigned” the answer should also include information such as, “The number was disconnected on Month Day, Year,” and “The number was reassigned on Month, Day, Year.”

Both elements should be part of the standard data fields. For instance, when a caller queries the database, it should return the following data fields: “Date last disconnected” and “Date last reassigned.” Those data points should be provided in response to any query so the caller can identify whether the number has been disconnected and/or reassigned at any point during their relationship with the owner.

The CMC agrees with the FCC that because disconnection is the first step in the reassignment process, a database containing information on when a number has been permanently disconnected will best allow callers to identify, at the earliest possible point, when a consumer can no longer be reached at that number. Informing callers at the disconnection stage also gives callers more lead time to update dialing lists.

We recommend that the FCC define “disconnection.” A number that is turned off for a day, maybe for non-payment, and then turned back on is probably not the type of disconnection callers are concerned with and could lead to false-positives in the data. A “disconnection” should be defined as when the consumer has given up the rights to the phone number.

18 and 19. Should the database be comprehensive? Do Callers need data from all types of voice service providers?

The more comprehensive the database, the more consumers can avoid receiving calls intended for others. Thus, the CMC supports including all types of voice service providers, including: wireless, wireline, interconnected VoIP, and non-interconnected VoIP providers.

We stress that the safe harbor should cover all calls, not just ones to numbers in the database. If the safe harbor is not comprehensive, callers will not use the database.

20. What is the universe of numbers that the database should contain?

Should the database contain all numbers allocated by a service provider or only numbers that have been disconnected since the commencement of the database? If the database

only contains numbers that have been disconnected since the commencement of the database, a caller may be unable to determine the status of a given number. However, if it contains all numbers, it might be unwieldy.

We understand how large and potentially unwieldy a database that includes all the phone number in the United States would be. We believe that a database with the widest possible universe of numbers will probably result in fewer unwanted calls to reassigned numbers. Similarly, callers would find it more useful if the database contains numbers disconnected seven to ten years prior to creation of the database. Therefore, while the CMC supports the largest database possible, it is anxious to learn what the service providers think is the best solution.

If the service providers want a smaller database that includes only disconnected numbers, and even if the database does not contain numbers disconnected prior to the creation of the database, callers should still be able to take advantage of the safe harbor for all calls. If a number does not match with a number in the database, callers should be allowed to presume that it has not been disconnected or reassigned and still fall under the safe harbor.

21. Should the reported reassignment information be limited to a specific timeframe? For instance, if the most recent reassignment of a number occurred five or ten years ago, do Callers need that information?

The CMC believes that the more reassigned and disconnected numbers that are in the database, the more helpful it would be to callers, and, more importantly, the more likely it will be that consumers with reassigned numbers would not be called inadvertently. Accordingly, the CMC suggests that the database contain numbers that have been disconnected or reassigned at any time in the past seven to ten years, as well as numbers reassigned or disconnected after the database is created.

22. How frequently should the data be reported to maximize Callers' ability to remove reassigned numbers from their calling lists before placing calls?

The data should be reported at least every 30 days, possibly more frequently, given that some service providers age their numbers quickly.

It is important that the database remain affordable for all callers – large and small. If requiring that numbers be reported daily or in real time would make accessing the data prohibitively expensive for smaller callers, providers could be permitted to update the data less frequently.

In order to obtain the safe harbor, however, callers should be required to query the database and update their call lists once every 30 days, and numbers not known to be

reassigned should be within the safe harbor. callers should also have time to query the database and update their call lists. For example, if the FCC updates the database on Day 1, callers should not be expected to have queried the database and updated their call lists on Day 2. There should be some reasonable period of time granted between when the database is updated and when callers are expected to have searched the database and updated their call lists accordingly. Real time updates would be prohibitively expensive and prone to error. A batch process is more feasible.

23. How long do service providers currently age numbers before making them available again for assignment?

As an organization consisting largely of callers, and not service providers, we do not know the answer to this question. However, we suggest that the FCC set a standard. This would be a major help in creating uniformity in the information in the database.

24. What should the format of the database be?

The information in the database should be easily accessible, usable and consistent. To meet this goal, the CMC recommends a delimited file format with headers. Our preference would be pipe-delimited, followed by tab-delimited and then comma-delimited. Delimited file formats are the most widely used formats and are easy to use because they work with most off-the-shelf programs (*i.e.*, there is no additional cost to callers to be able to use the data, and the data can be used with Excel). This format also keeps file size smaller for transferability.

25, 26, 27 and 28. Should data aggregators or entities that manage Callers' call lists be able to access the database? What criteria should an eligible user have? Should users be required to certify the purpose for which they seek access to the information? How should the information about those who access the database be tracked? How should the use of a database intersect with TCPA compliance?

Data aggregators and entities that manage callers' call lists should be able to access the database. However, use of the database should be restricted to TCPA compliance –that is, for customer servicing purposes and not for marketing purposes. Users should register with the database each year and certify that they are only using the data for the purposes of ensuring TCPA compliance in the servicing of existing customer accounts.

29. How can the cost of the database be minimized?

While it would be great for the database to be offered free of charge, the CMC understands that service providers will incur costs to update the database. We would support a yearly subscription fee to be charged to users to offset the cost of the database. Alternatively, if the cost-per-inquiry is very low, we would support that fee arrangement,

as well, although the billing should be periodic. We agree with previous commenters that any cost recovery mechanism should be reasonable so that access to the data will be affordable. If the FCC is going to create and maintain this database, it ought to be at cost including overhead similar to the way the PACER system is supposed to operate.

Additionally, because a reassigned number database will benefit both consumers (who will get fewer nuisance calls) and businesses (who will not have to spend money calling wrong numbers), the CMC believes it is appropriate for Congress to allocate funds to help offset the cost of the database.

31. Should there be a safe harbor?

Yes, it is absolutely imperative that there be a safe harbor. Having a safe harbor will encourage use of the database to reduce unwanted calls to individuals obtaining reassigned numbers.

The CMC believes that there should be a good faith safe harbor that a caller is not liable for misplaced calls if the caller subscribes to the FCC database and has an adequate call compliance program in place for reassigned numbers. The good faith belief can arise from past experiences with the consumer or from information that is reasonably believed to have been submitted by the consumer. The good faith belief could be potentially rebutted and thus potentially inapplicable to further calls if the caller is informed that they have the wrong number (absent further information demonstrating the number is, in fact, correct), if the FCC database or private databases indicate that the number has been reassigned, or if the person contacted validly requests to opt out. While the FCC establishes its singular database, the safe harbor should permit callers to use private providers until the FCC database is up and running. Use of this database would actually encourage and facilitate compliance, *i.e.*, reducing so-called “robocalls.”

We appreciate the fact that use of the database will be optional, as other commentators urged.

B. Approaches to Database Administration

In the Reassigned Numbers Notice of Inquiry (NOI), the FCC suggested four potential mechanisms for service providers to report reassigned number information and for callers to access that information. Most commenters addressing this issue favored a single, FCC-designated database, while others favored making the data available through commercial data aggregators. The FCC is seeking comment on these options. Specifically, the FCC is seeking comment on whether it should: (1) require service providers to report reassigned number information to a single, FCC-designated database; (2) require service providers to report such information to one or more commercial data aggregators; or (3) allow service providers to report such information to commercial data aggregators on a voluntary basis.

The CMC agrees with the FCC that, regardless of approach, the FCC should seek to balance callers' need for comprehensive and timely reassigned number information with the need to minimize the reporting burden placed on service providers.

32. Should service providers report information to a single, FCC-designated database or one or more commercial data aggregators? Should the FCC allow service providers to report such information to commercial data aggregators on a voluntary basis?

Service providers should report information to a single, FCC-designated database. The FCC has the expertise to gather and extrapolate the data from each service provider and operate such a database. This approach would allow the FCC to oversee the quality of the data and of the database operations and to ensure that the data continues to be available for as long as necessary. The database could be similar to the Do Not Call registry of the Department of Defense's ("DoD") Military Lending Act Database ("MLA Database").

The FCC could allow service providers to report information to commercial data aggregators, but that should be in addition to a FCC-designated database, not in place of it. Requiring service providers to report information to one or more data aggregators could create unfair competition in the marketplace and lead to increased compliance costs for callers. An FCC-maintained database would be subject to a single standard for data accuracy, which may not be present if there were multiple aggregators, each maintaining their own database.

The FCC should not allow service providers to report information on a voluntary basis. Allowing service providers to report reassigned number information on a voluntary basis would undermine the success of the database. If service providers were not reporting, consumers would continue to receive unwanted calls.

33. We seek comment on the DC Circuit's decision.

The decision strengthens the need for a timely and comprehensive reassigned numbers database. It does not suggest that existing, commercially available databases provide callers with sufficient resources.

1. Mandatory Reporting to a Single Database

34. Should the Commission establish and select an administrator of a single database?

As explained in our answer to Question #32, the FCC should establish and select an administrator of a single reassigned numbers database. Under this approach, the FCC should mandate that service providers report reassigned number information to the database and allow eligible users to query the database for such information.

35. How complicated would it be to do so?

We believe it would likely be necessary to develop a new database. However, if it were possible to expand or modify one of the existing numbering databases overseen by the FCC, the CMC would be open to that possibility.

36. What factors should the FCC consider in making a decision about the database, what processes should be followed, and who should the FCC consult with? For example, should the FCC consult with the North American Numbering Council (NANC)?

Yes, businesses or callers should be provided information when the North American Numbering Plan (“NANP”) numbers are disconnected.

37. Which entities have the expertise to serve as the administrator? Could the LNPA or a different numbering administrator (such as the NANPA or the Pooling Administrator) serve such a role? Or could an entirely different vendor serve the role? What factors should we take into account in selecting a reassigned numbers database administrator?

The CMC does not have an opinion on this matter.

38. How should an FCC-designated database be funded? How should users be charged?

An FCC-designated database should be funded either by Congressional appropriations, database users, or a combination of both. In this respect, the U.S. Court system’s PACER online resource/database could be a useful model, as it is funded partly by appropriations and partly by user fees.³ If database users are charged, they should be billed periodically, not per query. A user’s account could be assessed with each query, but then billed periodically. Charging users at the time of each query would unnecessarily complicate the billing and collection process.

The CMC stresses that the charge for using the database should be reasonable. Perhaps users could be charged based on “yes” hits. That is, if a number has been reassigned or disconnected, the user could be assessed a fee based on the costs of operating the database less congressional appropriations.

To the extent that user fees do not cover all of the costs of establishing and maintaining the database, and Congress does not allocate any funds for the purpose, it would be appropriate for the FCC to recover the remaining costs from reporting service providers. This is justified by the fact that these service providers’ customers would benefit from receiving fewer unwanted calls.

³ Although we note that there is a class action pending in the D.C. District Court that asserts PACER has overcharged users for its services.

To the extent that fees collected from database users exceed the costs of establishing and maintaining the reassigned numbers database, such fees should be held in a reserve account for years when the fees may not cover all the costs associated with the database. If the fees exceed the costs for two years in a row, the fees should be reduced.

39, 41 and 41. Which service providers should be required to report? Should certain service providers be exempt, i.e. rural ones?

All service providers, including wireless, wireline, interconnected VoIP, and non-interconnected VoIP, should be required to report because phone numbers can be transitioned from one type of service to another. The reporting requirements should also apply to text messaging-only providers. There could be an exception for service providers who do not have knowledge of the changes in status of a number because they do not have control over the provision of the number. The database should be comprehensive. Again, the information available to users (callers) should be very limited as discussed above.

42. What reporting requirements should there be – what data, how often, and in what format?

Please see the CMC's answers to the questions in Section A.

43. Should covered service providers be compensated?

We do not have an opinion on this question. We only stress that any cost paid by callers be reasonable.

44. Are there any issues related to feasibility or implementation of the database? What would be the timeline for establishing such a database?

We do not have any other issues at this time. We hope that FCC will work to set up the database as soon as possible. Consumers continue to get calls from reassigned numbers and industry continues to face the threat, and actual filing, of an increasing number of lawsuits over reassigned numbers.

45. We seek comment on the effectiveness, costs, and benefits of the single database approach.

A single database approach would be more comprehensive than an approach that involves multiple commercial data aggregators. A single database would also serve as an "authoritative source" of reassigned number information and could better facilitate establishment of a safe harbor from TCPA violations. Furthermore, a single database

would better enable the FCC to oversee quality of and access to the data. We understand that developing such a database would likely require substantially more time and expenditures, at least at the outset, than an approach that relies on commercial aggregators. However, we believe that the cost is well worth the investment. To demonstrate our support, the CMC members are willing to pay a reasonable fee for access to the database.

2. Mandatory Reporting to Commercial Data Aggregators

46 – 55. Should the FCC require service providers to report reassigned number information to commercial data aggregators? Should service providers only be required to report data to those commercial data aggregators that meet specific criteria? How should a service provider qualify to become a data aggregator? Which service providers should be required to report to data aggregators? Should service providers be required to report to some or all data aggregators? What other requirements should apply to service providers? Should service providers be able to recover their costs? How would contracts between the service providers and data aggregators work? Are there other implementation issues? What are the costs and benefits to reporting to commercial data aggregators?

An alternative to the single database approach discussed in the previous section is for the FCC to require service providers to report reassigned number information to commercial data aggregators. The CMC does **not** support this approach. It would be too fragmented. Thus, we do not believe it is appropriate to answer questions in this section.

3. Voluntary Reporting to Commercial Data Aggregators

56. As a second alternative, should service providers report reassigned number data to commercial data aggregators on a voluntary basis?

Under this approach, callers could use the FCC's reassigned numbers database directly or contract with commercial data aggregators to determine whether a phone number has been reassigned.

While the CMC does not support the idea of voluntary reporting to commercial data aggregators, the CMC recognizes that it might be useful for the FCC to allow service providers to report reassigned numbers on a voluntary basis.

However, if allowed, it is crucial that the safe harbor extend to companies working with commercial data aggregators. If the safe harbor does not include data aggregators, it is unlikely that anyone will take advantage of this option.

57. Are the reassigned number solutions that are available today comprehensive and timely? How could the FCC improve them? Could this be used for a safe harbor?

It is our understanding that the solutions available today are not always comprehensive, are not timely, and do not meet callers' needs. They do not provide any warranty, assurance, or indemnity as to the accuracy of the information. Companies may be reluctant to use today's solutions because the companies do not know if they are getting accurate information.

Creating a comprehensive database is most likely to cut down on unwanted calls. If, however, the FCC decides against creating a government-provided or sponsored database, the CMC would be supportive of a safe harbor from TCPA violations for those callers who use whatever existing or subsequently developed commercial solutions are or become available. The safe harbor should be the same as if it were for checking the FCC's database.

58. Are there ways to improve the reporting infrastructure?

We do not have a suggestion.

59. Should service providers be able to recoup their costs?

We do not have an answer to this question. .

60. What are the costs and benefits?

The CMC agrees with the FCC that while a voluntary approach would give service providers more flexibility than a mandatory approach, it would nevertheless result in a significantly less comprehensive database and would therefore be less effective in addressing the reassigned numbers problem than a mandatory FCC database. If the goal is to dramatically reduce unwanted calling to reassigned numbers, then a mandatory reporting to, and use of, the database is called for—subject to appropriate privacy safeguards.